
STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



2002 ANNUAL REPORT

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COMMISSION ON JUDICIAL PERFORMANCE

2002 ANNUAL REPORT

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INTRODUCTION



In November 1960, California voters approved Proposition 10, thereby establishing the nation's first permanent disciplinary body for judicial officers. Today, comparable bodies exist in all fifty states and in the District of Columbia, many modeled after the "California system."

Still at the forefront, in 2002 the California Commission on Judicial Performance released a ten-year summary of discipline statistics. The report is believed to be the first of its kind in the nation. The report was initially prepared for the Commission members' information. The Commission determined to release the report publicly in order to afford the judiciary and the public greater information about the Commission's work, much of which is confidential under the California Constitution and the rules governing the Commission.

The "Summary of Discipline Statistics 1990-1999" provides statistical information on the incidence of discipline as it relates to factors such as the judge's age, the number of years of judicial service, the size of the judge's court, the judge's disciplinary history, whether the judge was initially appointed or elected to office, and the type of misconduct for which the judge was disciplined.

The 2002 Annual Report covers the Commission's activities during the past year and sets forth a summary of the varied and diverse cases presented to the Commission for its consideration. Each commissioner has conscientiously evaluated the facts and carefully examined the legal and ethical issues in every case. I want to thank the members of the Commission for their hard work and dedication to the Commission's mandate – the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judiciary.

As Chair, I have had the opportunity to work closely, not only with the Commission members, but also with Commission staff on a continuous basis. The members of the Commission's staff are to be commended for their dedication, commitment and strong work ethic, especially the Director-Chief Counsel, Victoria Henley, and Commission Counsel, Richard Schickele. They work tirelessly to fulfill their responsibilities to ensure a fair presentation of the facts, ethical rules and law to enable the Commission to fulfill the charge given to it by the Constitution of the State of California.

It has been an honor to work with each member of the Commission and Commission staff and to serve as Chair.

A handwritten signature in cursive script, reading "Risë Jones Pichon".

Honorable Risë Jones Pichon
Chairperson

COMPOSITION OF THE COMMISSION

Pursuant to California Constitution, article VI, section 8, the Commission is composed of eleven members: one justice of a court of appeal and two trial court judges, all appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules and two appointed by the Speaker of the Assembly. Members are appointed to four-year terms. The members do not receive a salary but are reimbursed for expenses relating to Commission business. The members of the Commission elect a chairperson and vice-chairperson annually.

COMMISSION MEMBERS - 2002



**HONORABLE
RISE JONES PICHON**
Chairperson
Judge, Superior Court
Appointed by the Supreme Court
Appointed: March 3, 1999
Reappointed: March 1, 2003
Term Ends: February 28, 2007



**HONORABLE
VANCE W. RAYE**
Vice-Chairperson
Justice, Court of Appeal
Appointed by the Supreme Court
Appointed: January 1, 2001
Reappointed: March 1, 2001
Term Ends: February 28, 2005



MS. LARA BERGTHOLD
Public Member
Appointed by the Governor
Appointed: April 15, 1999
Term Ends: February 28, 2003



**HONORABLE
MADELEINE I. FLIER**
Judge, Superior Court
Appointed by the Supreme Court
Appointed: March 3, 1999
Reappointed: March 1, 2001
Term Ends: February 28, 2005



MARSHALL B. GROSSMAN, ESQ.
Attorney Member
Appointed by the Governor
Appointed: April 10, 2001
Term Ends: February 28, 2005

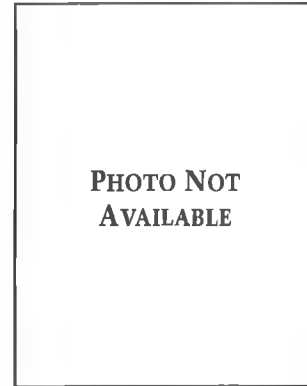
COMMISSION MEMBERS



MICHAEL A. KAHN, ESQ.
Attorney Member
Appointed by the Governor
Appointed: March 1, 1999
Term Ends: February 28, 2003



MRS. CRYSTAL LUI
Public Member
Appointed by the
Speaker of the Assembly
Appointed: April 9, 1999
Term Ends: February 28, 2003



MRS. PENNY PEREZ
Public Member
Appointed by the
Senate Committee on Rules
Appointed: August 9, 2002
Term Ends: February 28, 2003



MS. RAMONA RIPSTON
Public Member
Appointed by the
Speaker of the Assembly
Appointed: July 15, 1998
Reappointed: March 1, 2001
Term Ends: February 28, 2005



MS. BARBARA SCHRAEGER
Public Member
Appointed by the
Senate Committee on Rules
Appointed: September 14, 2001
Term Ends: February 28, 2005



BETTY WYMAN, PH.D.
Public Member
Appointed by the Governor
Appointed: September 12, 2001
Term Ends: February 28, 2005

OUTGOING MEMBER

MRS. GAYLE GUTIERREZ
Public Member
Appointed by the
Senate Committee on Rules
Appointed: April 5, 2000
Resigned: June 18, 2002

I.

OVERVIEW OF THE COMPLAINT PROCESS



THE AUTHORITY OF THE COMMISSION ON JUDICIAL PERFORMANCE

The Commission on Judicial Performance is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges (pursuant to article VI, section 18 of the California Constitution). Its jurisdiction includes all active California judges. The Commission also has authority to impose certain discipline on former judges, and the Commission has shared authority with local courts over court commissioners and referees. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges. The Commission does not have authority over judges pro tem or private judges. In addition to its disciplinary functions, the Commission is responsible for handling judges' applications for disability retirement.

This section describes the Commission's handling and disposition of complaints involving judges. The rules and procedures for complaints involving commissioners and referees and statistics concerning those matters for 2002 are discussed in Section V, Subordinate Judicial Officers.

HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may make a complaint to the Commission. Complaints must be in writing. The Commission also considers complaints made anonymously and matters it learns of in other

ways, such as news articles or information received in the course of a Commission investigation.

JUDICIAL MISCONDUCT

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 1, section E). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct also may involve improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, or soliciting money from persons other than judges on behalf of charitable organizations.

WHAT THE COMMISSION CANNOT DO

The Commission is not an appellate court. The Commission cannot change a decision made by any judicial officer. When a court makes an incorrect decision or misapplies the law, the ruling can be changed only through appeal to the appropriate reviewing court.

The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

REVIEW AND INVESTIGATION OF COMPLAINTS

Complaints about judges are reviewed and analyzed by the Commission's legal staff. When the Commission meets, it decides upon the action to take with respect to each complaint.

Many of the complaints considered by the Commission do not involve judicial misconduct. These cases are closed by the Commission after initial review.

When a complaint states facts which, if true and not otherwise explained, would be misconduct, the Commission orders an investigation in the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

ACTION THE COMMISSION CAN TAKE

Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission may close the case without action against the judge. If, after an investigation and opportunity for comment by the judge, the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may issue an advisory letter to the judge. In an advisory letter, the Commission will advise caution or express disapproval of the judge's conduct.

When more serious misconduct is found, the Commission may issue a private admonishment. Private admonishments are designed in part to bring problems to a judge's attention at an early stage in the hope that the misconduct will not be repeated or escalate. A private admonishment

consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the Commission.

Advisory letters and private admonishments are confidential. The Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. However, the Commission's rules provide that upon completion of an investigation or proceeding, the person who lodged the complaint will be advised either that the Commission has closed the matter or that appropriate corrective action has been taken. The California Constitution also provides that, upon request of the governor of any state, the President of the United States, or the Commission on Judicial Appointments, the Commission will provide the requesting authority with the text of any private admonishment or advisory letter issued to a judge who is under consideration for a judicial appointment.

A description of each advisory letter and private admonishment issued in 2002, not identifying the judge involved, is contained in Section IV, Case Summaries.

Public Dispositions

In cases involving more serious misconduct, the Commission may issue a public admonishment or a public censure.

This can occur after a hearing or without a hearing if the judge consents. The nature and impact of the misconduct generally determine the level of discipline. Both public ad-

monishments and public censures are notices that describe a judge's improper conduct and state the findings made by the Commission. Each notice is sent to the judge and made available to the press and the general public.

In the most serious cases, the Commission may determine—following a hearing—to remove a judge from office. Typically, these cases in-

ACTION THE COMMISSION CAN TAKE

Close (Dismissal)
Advisory Letter
Private Admonishment
Public Admonishment
Public Censure
Removal or Involuntary Retirement

I.
OVERVIEW OF THE COMPLAINT PROCESS

involve persistent and pervasive misconduct. In cases in which a judge is no longer capable of performing judicial duties, the Commission may determine – again, following a hearing – to involuntarily retire the judge from office. In cases in which the conduct of a former judge warrants public censure, the Commission also may bar the judge from receiving assignments from any California state court.

A judge may petition the Supreme Court to review an admonishment, censure, removal or involuntary retirement determination.

CONFIDENTIALITY

Under the California Constitution and the Commission Rules, complaints to the Commission and Commission investigations are confidential. The Commission ordinarily cannot confirm or deny that a complaint has been received or that an investigation is under way. Persons contacted by the Commission during an investigation are advised regarding the confidentiality requirements.

After the Commission orders formal proceedings, the charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES



LEGAL AUTHORITY

Recent Changes In The Law

Policy Declaration 3.5 of the Commission on Judicial Performance provides that every two years, in even-numbered years, the Commission shall review its rules and any proposed enactments, amendments or repeals. In October of 2002, public comment was invited on proposed changes to ten rules and one policy declaration. These changes were adopted on January 29, 2003 and are described below. In 2002, the Supreme Court adopted an interim amendment to the Code of Judicial Ethics. There were no substantive changes to the California Constitution, the California Rules of Court, the Government Code or the Code of Civil Procedure relating to the work of the Commission.

California Constitution, Government Code, and Code of Civil Procedure Section 170.9

The Commission on Judicial Performance was established by voter referendum in 1960. The Commission's authority is set forth in article VI, sections 8, 18, 18.1 and 18.5 of the California Constitution. In 1966, 1976, 1988, 1994 and most recently in 1998, the Constitution was amended to change various aspects of the Commission's work.

The Commission also is subject to Government Code sections 68701 through 68755. Commission determinations on disability retirement applications are governed by Government Code sections 75060 through 75064 and sections 75560 through 75564.

In addition, the Commission is responsible

for enforcement of the restrictions on judges' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. On January 29, 2003, the Commission adopted \$310.00 as the adjusted gift limit, for purposes of Code of Civil Procedure section 170.9.

The provisions governing the Commission's work are included in Appendix 1.

Commission Rules and Policy Declarations

Article VI, section 18(i) of the Constitution authorizes the Commission to make rules for conducting investigations and formal proceedings.

Commission Rules 101 through 138 were adopted by the Commission on October 24, 1996, and took effect December 1, 1996.

The Commission's internal procedures are further detailed in declarations of existing policy issued by the Commission. The Commission's Policy Declarations were substantially revised in 1997.

As part of the 2002 biennial review of its rules, the Commission on Judicial Performance adopted amendments to rule 102(e), (h) and (k) and rule 109(d) regarding confidentiality and disclosure; rule 114, rule 116 and rule 122 concerning procedures; rule 129 regarding the special masters' report; rule 133 concerning the hearing of additional evidence; and rule 134 regarding the vote of Commission members. Rules 119(b) and 130(a), which reference the California Rules of Court, were amended to conform to the revised and renumbered subsections of those rules. Policy Declaration 4.6, regarding

disclosure of information, also was amended.

The Commission Rules and Policy Declarations are included in Appendix 1, sections B and C, with the dates of adoption or approval and the dates of any amendments.

Code of Judicial Ethics

The Constitution requires the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). The Supreme Court adopted the Code of Judicial Ethics effective January 1996.

On December 30, 2002, the Supreme Court adopted an interim amendment to Canon 6 concerning the practice of law by subordinate judicial officers and certain others performing judicial functions. The canon as amended is included in Appendix 1, section E.

COMMISSION PROCEDURES

Commission Review of Complaints

Upon receipt, each written complaint about a California judge is carefully reviewed by the staff. Staff also requests any additional information needed to evaluate the complaint. Each complaint is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant investigation. (Commission Rule 109.)

Investigation at the Commission's Direction and Disposition of Cases Without Formal Proceedings

When the Commission determines that a complaint warrants investigation, the Commission directs staff to investigate the matter and report back to the Commission. There are two levels of investigation: a staff inquiry and a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.) Most cases begin with a staff inquiry. In more serious matters,

the Commission may commence with a preliminary investigation.

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the complaint, the complaint may be closed without the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

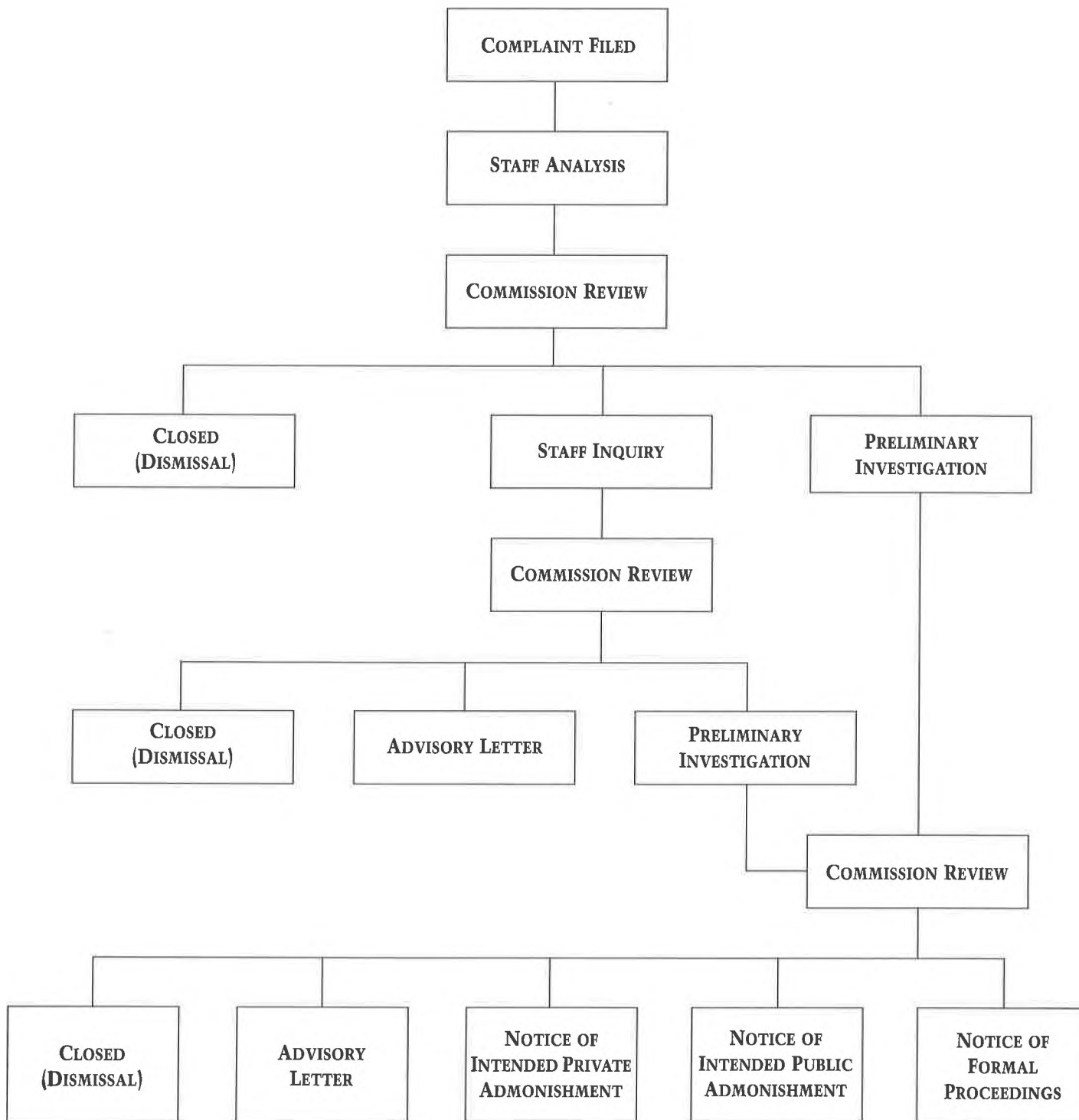
A judge has 20 days from the date of mailing to respond to an inquiry or investigation letter. (Commission Rules 110, 111.) Extensions of time to respond to inquiry and investigation letters are governed by the rules. (Commission Rule 108.)

Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission may close the case without any action against the judge. If improper or questionable conduct is found, but the misconduct was relatively minor or isolated or the judge recognized the problem and took steps to improve, the Commission may issue an advisory letter. (Commission Rule 110; Policy Declaration 1.2.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.)

After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue an advisory letter. (Commission Rule 111; Policy Declaration 1.4.) The Commission may also issue a notice of intended private admonishment or a notice of intended public admonishment, depending upon the seriousness of the misconduct. (Commission Rules 113, 115; Policy Declaration 1.4.) The Commission may also institute formal proceedings, as discussed below.

All notices of staff inquiry, preliminary in-

COMPLAINT PROCESS



vestigation, or intended private or public admonishment are sent to the judge at court, unless otherwise requested. Notices that relate to a staff inquiry are given by first class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. The Commission marks envelopes containing such notices "personal and confidential" and does not use the inscription "Commission on Judicial Performance" on the envelopes. (Commission Rule 107(a).)

Deferral of Investigation

The Commission may defer an investigation of a pending matter under certain circumstances. Deferral may be warranted, under Policy Declaration 1.8, when the case from which the complaint arose is still pending before the judge, when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved, and when criminal or other proceedings involving the judge are pending. While deferral of an investigation may result in delay in Commission proceedings, deferral is often appropriate to ensure that complaints before the Commission do not affect court proceedings. Deferral while a reviewing court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications.

Monitoring

In the course of a preliminary investigation, the Commission may monitor the judge's conduct, deferring termination of the investigation for up to two years. Monitoring may include periodic courtroom observation, review of relevant documents, and interviews with persons who have appeared before the judge. The judge is notified that a period of monitoring has been ordered and is advised in writing of the type of behavior for which the judge is being monitored. Monitoring may be used when the preliminary investigation reveals a persistent but correctable problem. One example is demeanor that could be improved. (Commission Rule 112.)

Formal Proceedings

After preliminary investigation, in cases involving allegations of serious misconduct, the Commission may institute formal proceedings. (Commission Rule 118.) Formal proceedings also may be instituted when a judge rejects a private or public admonishment and files a demand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are instituted, the Commission issues a notice of formal proceedings, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b).) Extensions of time to respond to a notice of charges are governed by the rules. (Commission Rules 108, 119.)

The rules provide for discovery between the parties after formal proceedings are instituted. A judge receives discovery from the Commission when the notice of formal proceedings is served. (Commission Rule 122.)

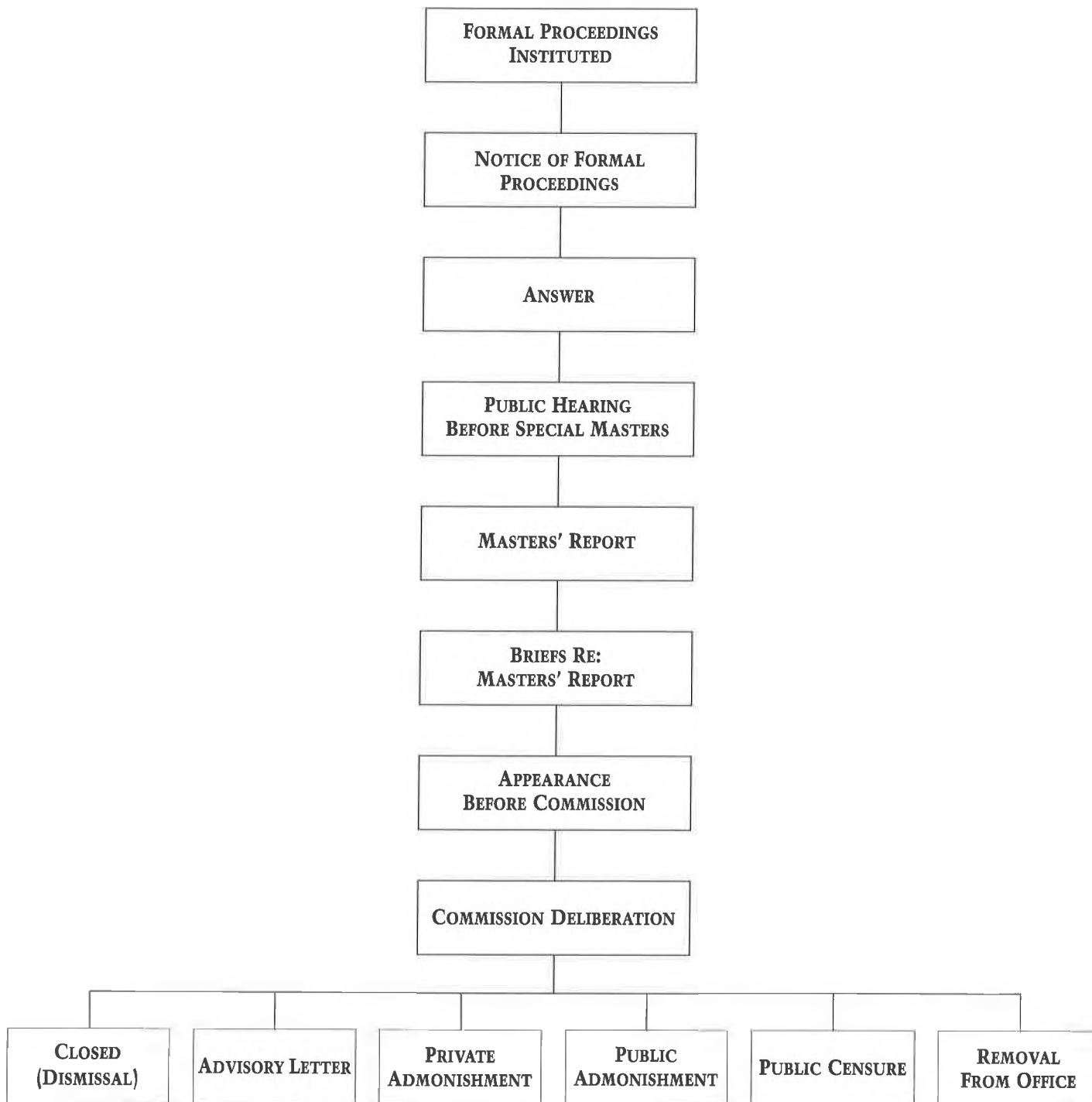
The Commission may disqualify a judge from performing judicial duties once formal proceedings are instituted if the judge's continued service is causing immediate, irreparable, and continuing public harm. (Commission Rule 120.)

Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the Commission. (Commission Rule 121(b).) Special masters are active judges or judges retired from courts of record.

As in all phases of Commission proceedings, the judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the

FORMAL PROCEEDINGS



Commission (see Section VII, Commission Organization and Staff). The California Evidence Code applies to the hearings. (Commission Rule 125(a).)

Commission Consideration Following Hearing

Following the hearing on the formal charges, the special masters file a report with the Commission. The report includes a statement of the proceedings and the special masters' findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the judge's answer. (Commission Rule 129.) Upon receipt of the masters' report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are given the opportunity to be heard orally before the Commission. (Commission Rules 130, 132.)

Amicus curiae briefs may be considered by the Commission when it is demonstrated that the briefs would be helpful to the Commission in its resolution of the pending matter. (Commission Rule 131.)

Disposition of Cases After Hearing

The following are actions that may be taken by the Commission pursuant to article VI, section 18 of the California Constitution after a hearing on the formal charges, unless the case is closed without discipline:

- Publicly censure or remove a judge for action that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
- Publicly or privately admonish a judge found to have engaged in an improper action or dereliction of duty.

- Retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.

In cases involving former judges, the Commission may publicly censure or publicly or privately admonish the former judge. The Constitution also permits the Commission to bar a former judge who has been censured from receiving an assignment from any California state court.

After formal proceedings, the Commission may also close the matter with an advisory letter to the judge or former judge.

Release of Votes

The Commission discloses the votes of the individual Commission members on disciplinary determinations reached after formal proceedings are instituted. The Commission also releases individual votes on public admonishments issued pursuant to Commission Rules 115 and 116.

SUPREME COURT REVIEW

A judge may petition the California Supreme Court to review a Commission determination to admonish, censure or remove the judge. Review is discretionary. If the Supreme Court so chooses, its review may include an independent "de novo" review of the record. (California Constitution, article VI, section 18(d).) California Rules of Court 935 and 936 govern petitions for review of Commission determinations.

Selected Supreme Court cases involving judicial disciplinary proceedings are listed in Appendix 2.

STATUTE OF LIMITATIONS

Article VI, section 18(d) of the California Constitution provides that a judge may be censured or removed, or a former judge censured, only for action occurring not more than six years prior to the commencement of the judge's current term (or a former judge's last term).

STANDARD OF PROOF

The standard of proof in Commission proceedings is proof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 275.)

CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The California Constitution authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission. (California Constitution, article VI, section 18(i)(1).) The Commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, for example, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f) - (k); Policy Declarations 4.1- 4.6.) During the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

The Constitution permits the Commission to make explanatory statements during proceedings. (California Constitution, article VI, section 18(k); Commission Rule 102(c).)

The Constitution provides that when formal proceedings are instituted, the notice of charges, the answer, and all subsequent papers and proceedings are open to the public. (California Constitution, article VI, section 18(j); see also Commission Rule 102(b).)

After final resolution of a case, the rules require the Commission to disclose to the person who filed the complaint that the Commission has found no basis for action against the judge or determined not to proceed further in the matter, has taken an appropriate corrective action (the nature of which is not disclosed), or has imposed public discipline. The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Commission Rule 102(e).)

The Commission also is required to provide the text of any private admonishment, advisory letter or other disciplinary action to appointing authorities upon request. (California Constitution, article VI, section 18.5.)

III.

2002 STATISTICS

ACTIVE AND FORMER JUDGES



COMPLAINTS RECEIVED AND INVESTIGATED

In 2002, there were 1,610 judgeships within the Commission's jurisdiction. In addition to jurisdiction over active judges, the Commission has authority to impose certain discipline upon former judges.

The Commission's jurisdiction also includes California's 447 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving the eight judges of the State Bar Court.

JUDICIAL POSITIONS As of December 31, 2002

Supreme Court	7
Court of Appeal	105
Superior Courts	1,498
Total	1,610

New Complaints

In 2002, 918 complaints about active California judges and former judges were considered by the Commission for the first time. The 918 complaints named a total of 1331 judges (836 different judges). The complaints set forth a wide array of grievances. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's discretionary handling of judicial duties.

2002 CASELOAD - JUDGES

Cases Pending 1/1/02	66
New Complaints Considered	918
Cases Concluded in 2002	900
Cases Pending 12/31/02	76

Discrepancies in totals are due to consolidated complaints and/or dispositions.

In 2002, the Commission received 128 complaints about subordinate judicial officers. These cases are discussed in Section V.

In 2002, the Commission received two complaints about State Bar Court judges. After review, it was determined that neither warranted further action.

The Commission also received nearly 500 complaints in 2002 concerning individuals and matters which did not come under the Commission's jurisdiction: federal judges, former judges for matters outside the Commission's jurisdiction, judges pro tem, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals.

Staff Inquiries and Preliminary Investigations

In 2002, the Commission ordered 58 staff inquiries and 37 preliminary investigations.

III.
2002 STATISTICS - ACTIVE AND FORMER JUDGES

INVESTIGATIONS COMMENCED IN 2002

Staff Inquiries	58
Preliminary Investigations	37

Formal Proceedings

At the beginning of 2002, there were six formal proceedings pending before the Commission. The Commission instituted formal proceedings in four cases during 2002. In all of these cases the Commission has the authority to impose discipline, including censure and removal, subject to discretionary review by the Supreme Court upon petition by the judge. As of the end of 2002, six formal proceedings had been concluded and three formal proceedings remained pending before the Commission. In another matter, the Commission's determination was the subject of a review petition before the Supreme Court.¹

FORMAL PROCEEDINGS

Pending 1/1/02	6
Commenced in 2002	4
Concluded in 2002	6
Pending 12/31/02	4

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2002, regardless of when the complaints were received.² In 2002, a total of 900 cases were concluded by the Commission.³ The average time period from the filing of a complaint to the disposition was 4.2 months. A chart of the dispo-

sition of all cases completed by the Commission in 2002 is included on page 13.

**TYPE OF COURT CASE UNDERLYING
COMPLAINTS CONCLUDED IN 2002**

Criminal	46%
General Civil	22%
Family Law	15%
Small Claims/Traffic	6%
All Others	9%

2% of the complaints did not arise out of court cases. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.

SOURCE OF COMPLAINTS CONCLUDED IN 2002

Litigant/Family/Friend	87%
Attorney	6%
Judge/Court Staff	1%
All Other Complainants	5%
(including citizens)	
Source Other Than Complaint	1%
(includes anonymous letters, news reports)	

Closed Without Action

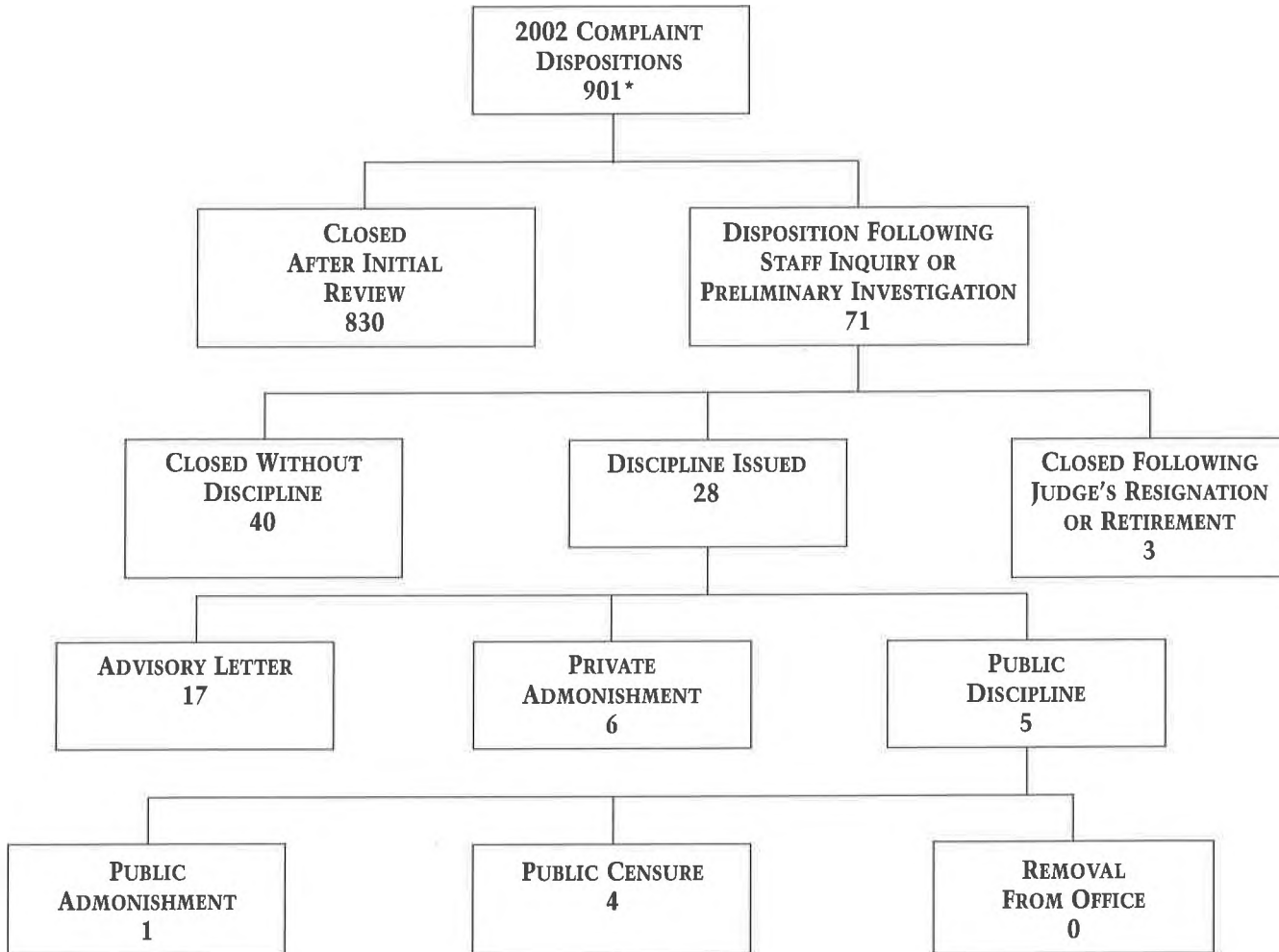
In 830 of the cases closed in 2002, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. (In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct.) These cases were closed by the Commission without staff inquiry or preliminary investigation.

¹ The *Platt* matter was included as a pending matter and was not included in the complaint disposition statistics because a review petition was pending before the Supreme Court at the end of 2002. The Supreme Court denied review in February 2003. The case will be included in the dispositional statistics in the 2003 Annual Report.

² Staff inquiries and preliminary investigations in the cases closed in 2002 may have commenced in prior years. Cases or portions of cases pending at the end of 2002 are not included in complaint disposition statistics.

³ The total number of dispositions exceeds the total number of cases concluded because complaints involving multiple allegations of varying severity may be resolved with multiple dispositions. For example, some allegations in a case may warrant closure with an advisory letter while others in the same case warrant public discipline. These dispositions do not always occur within the same year – some allegations may be closed at the time formal charges are issued and the remaining allegations not concluded until after hearing and determination by the Commission.

2002
COMPLAINT DISPOSITIONS



* See footnote 3 at page 12.

Following staff inquiry or preliminary investigation, another 40 matters were closed without any action. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

Closed With Discipline

In 2002, the Commission issued four public censures, one public admonishment, six private admonishments and 17 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of judicial conduct which resulted in discipline in 2002 appears on page 15. The types of conduct are listed in order of prevalence. The numbers on the chart indicate the number of times each type of conduct resulted in discipline. A single act of misconduct is counted once and is assigned to the cat-

egory most descriptive of the wrongdoing. If separate acts of different types of wrongdoing were involved in a single case, each different type of conduct was counted and assigned to an appropriate category. If the same type of conduct occurred on multiple occasions in a particular case, however, it was counted only once.

Resignations and Retirements

The Constitution authorizes the Commission to continue proceedings after a judge retires or resigns and, if warranted, to impose discipline upon the former judge. When a judge resigns or retires during proceedings, the Commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. In 2002, the Commission closed three matters without discipline when the judge resigned or retired with an investigation pending.

TYPES OF CONDUCT RESULTING IN DISCIPLINE*

DISQUALIFICATION,
DISCLOSURE AND
RELATED RETALIATION
[6]

ON-BENCH ABUSE OF
AUTHORITY IN PERFORMANCE
OF JUDICIAL DUTIES
[5]

DEMEANOR, DECORUM
(includes inappropriate humor)
[4]

GIFTS/LOANS/FAVORS
TICKET-FIXING
[4]

MISCELLANEOUS OFF-BENCH
CONDUCT
[4]

ADMINISTRATIVE
MALFEASANCE
(includes conflicts between judges, failure
to supervise staff, delay in responding to
complaints about commissioners)
[3]

OFF-BENCH ABUSE OF OFFICE
(includes charitable fund raising,
improper use of official stationery)
[3]

BIAS OR APPEARANCE OF BIAS
(NOT DIRECTED TOWARD A
PARTICULAR CLASS)
(includes embroilment, prejudice,
favoritism)
[3]

FAILURE TO ENSURE RIGHTS
[2]

NON-SUBSTANCE ABUSE
CRIMINAL CONDUCT
[2]

IMPROPER BUSINESS
ACTIVITIES
[2]

EX PARTE COMMUNICATIONS
[2]

ABUSE OF
CONTEMPT/SANCTIONS
[1]

COMMENT ON
PENDING CASE
[1]

DECISIONAL DELAY,
TARDINESS, ATTENDANCE
[1]

IMPROPER POLITICAL
ACTIVITIES
[1]

SEXUAL HARASSMENT/
INAPPROPRIATE WORKPLACE
GENDER COMMENTS
[1]

LACK OF CANDOR/COOPERATION
WITH REGULATORY AUTHORITIES
[1]

MISUSE OF COURT RESOURCES
[1]

* See "Closed With Discipline" at page 14 of text.

IV. CASE SUMMARIES



PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2002 are summarized in this section. The full text of these decisions is available from the Commission office and on the Commission's Web site at <http://cjp.ca.gov>.

REMOVAL FROM OFFICE BY THE COMMISSION

In 2002, the Commission issued one order of removal, in Inquiry Concerning Judge Michael E. Platt, No. 162. In November 2002, Judge Platt filed a petition for review in the California Supreme Court. In February 2003, the Supreme Court denied review. Because the petition was pending at the end of 2002, this matter has not been included in the 2002 case disposition statistics.



Order of Removal of Judge Michael E. Platt, August 5, 2002

Judge Michael E. Platt of the San Joaquin County Superior Court was ordered removed from office by the Commission on August 5, 2002, for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission. The judge filed a petition for writ of review of the Commission's determination in the California Supreme Court; this petition was pending at the end of 2002.

The Commission determined that Judge Platt improperly ordered dismissal of three traffic tickets based on his personal relationship with a man from whom he had borrowed \$3,500, a debt that had been discharged in bankruptcy. The judge dismissed a traffic ticket issued to the man and a ticket issued to the man's niece. The judge also attempted to dismiss a ticket issued to the man's wife. All of the judge's actions were taken after ex parte communications from the man's wife. The Commission adopted the special masters' finding that "ticket fixing is a quintessential bad act of a judge," and is "an abuse of power that citizens unquestionably understand and are suspicious about." The Commission adopted the masters' finding that when Judge Platt ordered dismissal of the tickets, he knew that his actions were wrong, although he acted out of a desire to help others. The Commission concluded that the judge's actions were willful misconduct.

The Commission determined that Judge Platt also improperly ordered dismissal of a traffic ticket issued to the minor son of a reserve deputy sheriff. After ex parte communications with his courtroom bailiff about the matter, Judge Platt initiated an ex parte communication with the California Highway Patrol officer who had issued the ticket. Thereafter, Judge Platt caused the ticket to be dismissed. The Commission adopted the masters' findings that the judge had the ticket dismissed to help the son of an acquaintance, and knew when he took the action that it was wrong. His actions were willful misconduct.

The Commission found that Judge Platt tele-

phoned a court commissioner and said that an individual, whom he identified by name and as the judge's godfather, had received a traffic ticket. He also said that the man was active in the community. The Commission found that conveying this information was an attempt to influence the commissioner and was prejudicial misconduct.

In another instance, the Commission found that Judge Platt visited the arraignment judge and asked him to grant an "own recognizance" release to the defendant in a case. Judge Platt told the other judge that the defendant was an acquaintance or family member of an acquaintance of Judge Platt's. The Commission found that Judge Platt was attempting to use the prestige of his office to advance the personal interests of an acquaintance; his actions constituted willful misconduct.

In another matter, the Commission found that Judge Platt telephoned another judge about a juvenile dependency matter that was before that judge. The case involved a parent who had been a client of Judge Platt's when he practiced law. Judge Platt told the judge about a communication he had received from one of the parents in the case. The Commission found that Judge Platt's conveyance of substantive information about the parties and the case constituted improper action.

In determining that removal was the appropriate sanction, the Commission pointed out that Judge Platt had received a private admonishment from the Commission in 1997 for soliciting attorneys who appeared before him to purchase raffle tickets for a church fundraiser and tickets to a fundraiser for a childcare center, and for selling candy bars at court to benefit his children's parochial school. The judge had been cautioned by colleagues against such activities before being admonished. The Commission noted that Judge Platt, in accepting the private admonishment, had stated in a letter that he would conduct himself and his affairs in compliance with the Code of Judicial Ethics in all areas. The Commission also stressed that Judge

Platt's responses to the allegations raised concerns about his truthfulness, noting in particular that his testimony that he did not recognize an ethical problem with dismissing the tickets at the time he dismissed them was not credible. The Commission concluded that despite some factors in mitigation, removal was necessary for protection of the public, enforcement of rigorous standards of judicial conduct, and maintenance of public confidence in the integrity and independence of the judicial system.

In a separate statement of dissent setting forth her position that Judge Platt should be publicly censured, Commission member Ms. Ramona Ripston expressed the view that, in light of Judge Platt's motivations, personal history, and record as a judge, as well as his public and private apologies, unequivocal acceptance of responsibility, and effort to improve future performance, public censure would be adequate discipline.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Berghold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Mrs. Crystal Lui, Ms. Barbara Schraeger, and Dr. Betty L. Wyman voted in favor of all the findings and conclusions, and to remove Judge Platt from office. Commission member Ms. Ramona Ripston voted in favor of all the findings and conclusions, but voted to publicly censure Judge Platt. There was one public member position vacant.

PUBLIC CENSURE BY THE COMMISSION

In 2002, the Commission imposed four public censures. Three of the judges were also barred from receiving assignments, appointments or references of work from any California state court.



Public Censure of Judge James I. Aaron, July 8, 2002

Judge James I. Aaron of the Fresno County Superior Court was publicly censured by the

Commission for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The discipline was imposed pursuant to Commission Rule 127 (Discipline by Consent), and was conditioned on Judge Aaron's irrevocable retirement from judicial office within five calendar days of the issuance of the Commission's decision.

The Commission found that Judge Aaron lent the prestige of his judicial office to an investment scheme later determined to be fraudulent. The judge introduced investors to the scheme and vouched for the personal integrity of one of the promoters at a time when the judge suspected the scheme might not be legitimate. One of the individuals solicited by the judge was an attorney appearing before him. The judge also kept money he received from the perpetrators of the scheme. The judge represented to investors that profits would be forthcoming, and discouraged them from complaining to government authorities. The judge also instructed his staff to put all calls from the promoters of the financial scheme through to him either on the bench or in chambers. The Commission determined that this conduct constituted, at a minimum, conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The Commission also found that Judge Aaron had avoided his personal financial obligations over a substantial period of time by writing worthless checks, by making false promises and misrepresentations, and by using other delaying tactics. The Commission found that this conduct was also prejudicial misconduct.

The Commission also determined that the judge engaged in improper action when he ordered defendants to approach the bench where he conducted a "smell test" of their hair and/or examined their eyes and then remanded them to custody if he believed they were under the influence of drugs.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Berghold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Mrs. Crys-

tal Lui, Ms. Ramona Ripston, Ms. Barbara Schraeger and Dr. Betty L. Wyman voted to impose the public censure. There was one public member position vacant.



**Public Censure of
Judge William H. Sullivan,
May 17, 2002**

Former Judge William H. Sullivan, retired from the Riverside County Superior Court, was publicly censured and barred from receiving any assignment, appointment or reference of work from any California state court for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The discipline was imposed pursuant to Commission Rule 127 (Discipline by Consent).

The Commission found that Judge Sullivan served as trustee for several trusts after taking the bench, in violation of canon 4E(1) of the Code of Judicial Ethics, and in his role as trustee committed serious wrongdoing including misusing trust funds for his own benefit. The Commission found that this conduct "violated the most basic fiduciary duties and fundamental ethical obligations." The judge presided over a probate matter, despite being disqualified, in order to benefit himself. At the time, the judge was serving as backup executor and backup trustee and continuing to manage the financial affairs of the estate and trust. This was willful misconduct.

In a conservatorship proceeding, Judge Sullivan purchased property from the conservatorship estate over which he was presiding; this was prejudicial misconduct. The judge continued to preside over the matter after purchasing the property, approving the accounting that included the sale. This was willful misconduct. The Commission found that the judge acted in bad faith by presiding in a matter in which he was clearly disqualified, and by advancing the hearing date for confirmation of the sale to himself.

Finally, the judge failed to disclose information on his Statements of Economic Interests. The Commission found that the judge had acted in bad faith, in order to conceal the information. This was willful misconduct.

Judge Sullivan stipulated, and the Commission concluded, that the judge engaged in a pattern of improper financial dealings and fiduciary activities from the time he became a judge in 1987 until he decided to retire in 1999, after learning of the Commission's investigation. The Commission determined that the sanction of censure and bar from receiving judicial appointments or assignments—the most serious it could levy against a former judge—was the minimum necessary for the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system. The Commission noted that it would be “remiss in its responsibilities if it did not root out, expose and discipline such longstanding financially motivated willful misconduct, regardless of the judge's age or health.”

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Mrs. Crystal Lui, and Ms. Barbara Schraeger voted to impose the public censure and bar from receiving assignments. Commission members Ms. Gayle Gutierrez, Ms. Ramona Ripston, and Dr. Betty L. Wyman did not participate in this proceeding.



**Public Censure of
Judge Arthur S. Block,
December 9, 2002**

Judge Arthur S. Block, retired from the Riverside County Unified Superior Court, was publicly censured and barred from receiving any assignment, appointment or reference of work from any California state court for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The discipline

was imposed pursuant to Commission Rule 127 (Discipline by Consent).

The Commission found that Judge Block engaged in acts of misconduct toward a female deputy county counsel who appeared before him in juvenile matters. During the attorney's argument in a case, the judge wrote the word “relax” on her hand with a pen. During a sidebar conference in another case, the judge reached out as if to fasten a button on the front of the attorney's suit. Finally, after a chambers conference during a contested juvenile dependency hearing, Judge Block excused other counsel and asked the deputy county counsel to remain and to close the door; he told her that he was attracted to her, walked around his desk, and kissed her, putting his tongue in her mouth. The judge then returned to the bench and continued presiding over the case. The judge's actions were, at a minimum, prejudicial misconduct.

After a conversation involving Judge Block, attorneys, and court staff in which it was suggested as a joke that a court interpreter be held in contempt for being late, the interpreter was handcuffed by a deputy in the public hallway outside the courtroom and brought into the courtroom. Judge Block told the interpreter that her vacation plans were “somewhat awry” because there was no bail for contempt. He then told her that it was a joke and had the deputy remove the handcuffs. The Commission found that the judge's actions in this matter were prejudicial misconduct.

The Commission also found that the judge engaged in prejudicial misconduct when he threatened retaliation for complaints against him and threatened the interpreter with banishment from a public courtroom for complaints the judge believed she had made against him. The interpreter was in the judge's courtroom as an observer in a case of interest to her. During a recess, the judge assembled the interpreter's supervisor and various members of his court staff in chambers and told them that he had heard that the interpreter had made allegations against him, and that if she had, he did not think it was

appropriate for her to be in his courtroom. The judge then brought the interpreter into his chambers and, with other court staff present, asked her whether she had made a complaint; when she said that she had not, he said that she was welcome in his courtroom. This conduct was undertaken by the judge after being admonished by the court's attorney not to discuss the matter with the interpreter.

In another matter, Judge Block spoke with a longtime acquaintance by telephone about the manner in which a court in a neighboring county had handled a misdemeanor case against the acquaintance's daughter. Judge Block had the daughter come to his chambers to relate her concerns. He then telephoned a judge of the other county's court, asked whether the case could be handled without the defendant's appearance, and asked whether he could personally represent that the defendant had a valid driver's license. The judge's conduct in this matter was determined to be prejudicial misconduct.

Noting that Judge Block had irrevocably retired and that censure and barring the judge from receiving judicial appointments or assignments was the maximum sanction that could be imposed, the Commission concluded that it was appropriate to accept the stipulation characterizing the judge's misconduct as prejudicial misconduct.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Mr. Michael A. Kahn, Mrs. Crystal Lui, Mrs. Penny Perez, Ms. Ramona Ripston, Ms. Barbara Schraeger and Dr. Betty L. Wyman voted to impose the public censure and bar from receiving assignments. Commission members Judge Madeleine I. Flier and Mr. Marshall B. Grossman did not participate in this proceeding.



**Public Censure of
Judge James R. Simpson,
December 9, 2002**

Former Judge James R. Simpson, retired from the Los Angeles County Unified Superior Court, was publicly censured and barred from receiving any assignment, appointment or reference of work from any California state court for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The discipline was imposed pursuant to Commission Rule 127 (Discipline by Consent).

The Commission found that Judge Simpson committed willful misconduct when he presided over two cases involving his friend and former campaign manager, and undertook efforts on behalf of the same individual in two other cases. In a traffic matter involving his friend, Judge Simpson recalled a bench warrant issued by another judge and twice continued the matter. In a driving under the influence case involving the same friend, Judge Simpson recused himself, but later continued the matter to allow his friend additional time to complete certain requirements and ultimately set bail after revoking probation. In a third matter, Judge Simpson met in chambers with the same friend and the friend's business associate, who had been cited in a traffic matter, and discussed the case with them. The judge then summoned to his chambers the court commissioner who had accepted the business associate's guilty plea, and asked the commissioner what could be done about the case. Judge Simpson subsequently ordered the case transferred back to the commissioner for further proceedings. In a fourth matter, Judge Simpson spoke in chambers with the same friend about a traffic citation issued to another longtime friend or acquaintance of the judge's. When this traffic litigant failed to appear in court or request a continuance before the date set for her appearance, the judge contacted the clerk's office and requested that the matter be continued.

On three occasions, Judge Simpson initiated *ex parte* communications with another court commissioner about three different traffic citations issued to the judge's friends. On a fourth occasion, the judge told the commissioner that a traffic litigant's husband was a good friend of his, and asked what could be done about a bench warrant the commissioner had issued when the litigant failed to appear. One or two days later, Judge Simpson brought the litigant's husband to the commissioner's courtroom and told the commissioner who the man was. The judge also told the litigant's husband that the commissioner would take care of him. The Commission found that the judge's conduct in all four matters was prejudicial misconduct.

In another matter, Judge Simpson summoned a police officer to his chambers and spoke to him about a traffic ticket that had been issued to a friend of the judge's. The judge's conduct implied that he wanted the officer to give his friend favorable treatment. The Commission determined that the judge engaged in willful misconduct.

The Commission concluded that Judge Simpson should be censured and barred from receiving an assignment, appointment, or reference of work from any California state court. The Commission noted that this was the maximum sanction it could levy against a former judge, and that it was the appropriate sanction for the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Michael A. Kahn, Mrs. Penny Perez, Ms. Ramona Ripston, Ms. Barbara Schraeger and Dr. Betty L. Wyman voted to impose the public censure and bar from receiving assignments. Commission member Mrs. Crystal Lui recused herself from participating in this proceeding. Commission member Mr. Marshall B. Grossman did not participate in this proceeding.

PUBLIC ADMONISHMENT BY THE COMMISSION

The Commission may publicly or privately admonish a judge for improper action or dereliction of duty. Public admonishments are issued in cases when the improper action or dereliction of duty is more serious than conduct warranting a private admonishment. In 2002, the Commission publicly admonished one judge.



Public Admonishment of Judge Peter J. McBrien, April 25, 2002

Judge Peter J. McBrien of the Sacramento County Superior Court was publicly admonished for conduct prejudicial to the administration of justice that brings the judicial office into disrepute, pursuant to Commission Rule 115 (Notice of Intended Public Admonishment).

Judge McBrien was convicted on a plea of *nolo contendere* to a violation of Penal Code section 384a, a misdemeanor prohibiting the willful or negligent cutting or mutilation of any tree growing upon public land or the land of another without permission. The judge's conviction arose out of the cutting of trees and removal of limbs from trees on public land adjacent to his residence. The terms of the judge's probation included payment of \$20,000 in restitution as well as a \$500 fine. The Commission determined that the judge's conduct evidenced disregard of the principles of personal and official conduct embodied in the Code of Judicial Ethics.

Commission members Judge Risë Jones Pichon, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Mrs. Crystal Lui, Ms. Ramona Ripston, Ms. Barbara Schraeger and Dr. Betty L. Wyman voted to impose the public admonishment. Justice Vance W. Raye recused himself from participating in this matter. Commission member Ms. Gayle Gutierrez did not participate in this matter.

PRIVATE DISCIPLINE

PRIVATE ADMONISHMENTS

Private admonishments are designed in part to correct problems at an early stage, thus serving the Commission's larger purpose of maintaining the integrity of the California judiciary.

A private admonishment also may be used to elevate discipline in subsequent proceedings. This is particularly true in cases where the judge repeats the conduct that was the subject of the earlier discipline.

In 2002, the Commission imposed six private admonishments. The admonishments are summarized in this section. In order to maintain confidentiality, it has been necessary to omit certain details, making some summaries less informative than they otherwise would be. Because these examples are intended in part to educate judges and the public, and to assist judges in avoiding inappropriate conduct, the Commission believes it is better to describe them in abbreviated form than to omit them altogether.

1. In one civil matter, the judge ordered a party's spouse, over whom the judge did not have authority, to appear to defend the party's excuse for being absent. The judge also displayed prejudgment through flattering and solicitous comments to a witness who was testifying in the proceedings. In another case, the judge failed to follow the statutory requirements for due process in conservatorship proceedings, engaged in ex parte communication, displayed bias against an attorney, and made an appointment of counsel despite the counsel's obvious conflict of interest. In a third matter, the judge made remarks evidencing prejudgment and imposed sanctions without affording notice, a hearing, or a statement of reasons.
2. In four juvenile dependency matters, the judge violated the parents' due process rights. In one case, the judge removed siblings of a dependent child from their parent's custody at a six-month review hearing without prior notice

or the filing of a supplemental dependency petition. In another matter, the judge issued orders affecting parental rights without notice to the affected parent and without making the findings regarding notice that are required by law. In another case, the judge ordered custody of a child transferred from one parent to the other without notice and without a finding that the child was a dependent of the court. In another case, the judge ordered the removal of a child from the custodial grandparents without notice to the parents or the grandparents and without affording them a reasonable opportunity to be heard on the matter. After institution of formal proceedings by the Commission, the judge retired and stipulated to a private admonishment, which the judge agreed could be made available to the public. The judge also agreed not to serve as a judge in the future by appointment or assignment.

3. A judge failed to recuse or to fully disclose information relevant to the question of disqualification. The judge also received improper gifts from attorneys and engaged in off-bench activities that raised an appearance of partiality. In addition, the judge sent a letter on judicial stationery that did not concern official court business and that detracted from public confidence in the integrity and impartiality of the judiciary.
4. A judge failed to disclose a past attorney-client relationship with an attorney appearing before the judge. In aggravation, the judge previously had received an advisory letter for a similar failure to disclose.
5. A judge initiated an angry and profane confrontation with a member of court staff on courthouse property. On a different occasion, the judge berated another member of court staff in open court.
6. A judge was convicted of a misdemeanor offense that did not involve alcohol, controlled substances or moral turpitude.

ADVISORY LETTERS

The Commission advises caution or expresses disapproval of a judge's conduct in an advisory letter. The Commission has issued advisory letters in a variety of situations. As noted by the California Supreme Court in *Oberholzer v. Commission on Judicial Performance* (1999), "Advisory letters may range from a mild suggestion to a severe rebuke." (20 Cal.4th 371, 393.) An advisory letter may be issued when the impropriety is isolated or relatively minor, or when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. An advisory letter is especially useful when there is an appearance of impropriety. An advisory letter might be appropriate when there is actionable misconduct offset by substantial mitigation.

In 2002, the Commission issued 17 advisory letters. These advisory letters are summarized in this section.

Administrative Malfeasance

Judges are required to diligently discharge their administrative responsibilities.

1. A presiding judge did not respond to a litigant's complaint about a subordinate judicial officer in a timely manner, or to a letter from the Commission inquiring about the status of the matter.
2. A judge failed to take any action when information revealing potential serious wrongdoing by a judicial colleague was before the judge.

Bias

Judges are prohibited from manifesting bias in the performance of judicial duties as required by law. (Canon 3B(5).)

3. A judge made disparaging remarks at a hearing about an attorney who was not present but was a member of the firm representing one of the parties. The remarks, made after the attorney had prevailed on a writ, suggested bias against the attorney.

4. A judge's remarks in open court at the outset of a criminal trial about the likelihood that the defendant would be convicted conveyed the appearance of prejudgment and a lack of impartiality.

Public Comment

Canon 3B(9) prohibits judges from making public comment about a pending or impending proceeding in any court, with limited exceptions.

5. A judge made an improper public comment on a pending case.

Delay, Dereliction of Duty

Judges are required to perform the duties of judicial office diligently as well as impartially. (Canon 3.)

6. A judge failed to render a decision on submitted matters in a family law proceeding for six months and had failed to adequately track the matters.

Demeanor and Decorum

A judge "shall require order and decorum in proceedings before the judge" and "shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity..." (Canon 3B(3), (4).)

7. During jury selection, a judge made disparaging comments about jury service, court administration, and another judge. The judge also made a discourteous remark to a potential juror.

Disclosure and Disqualification

Judges must disqualify themselves under certain circumstances and trial judges must make appropriate disclosures to those appearing before them.

8. A judge presided over a hearing on a motion and issued a ruling before disclosing a conflict of interest. The judge then recused from further proceedings.

Ex Parte Communications

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper. (Canon 3B(7).)

9. A judge met ex parte with representatives of the prosecution to discuss a pending motion.

Favoritism

Judges must not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment, nor may judges convey or permit others to convey the impression that any individual is in a special position to influence the judge. (Canon 2B(1).)

10. While serving as a commissioner and before becoming a judge, the judge handled a traffic matter for the relative of an acquaintance without requiring the relative to be present. The disposition was not lenient or otherwise favorable to the relative.

Improper Political Activities

"A judge or a judicial candidate shall refrain from inappropriate political activity." (Canon 5.)

11. A judge's campaign literature misrepresented the judge's professional experience.

Off-Bench Improprieties

A judge is required to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. (Canon 2A and Commentary.)

12. A judge served in a non-judicial position incompatible with judicial office.

13. A judge sent letters to public officials on judicial stationery concerning a personal dispute.

Case-Related Abuse of Authority

Acts in excess of judicial authority may constitute misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. (See *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 371, 374; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 694.)

14. While investigating a prospective juror's medical excuse, the judge contacted the juror's supervisor and disclosed the claimed medical excuse. The prospective juror had not consented to the release of this confidential information to the employer.

Miscellaneous

Some cases involved more than one type of misconduct.

15. A presiding judge failed to process a complaint about a court commissioner for nine months. In another matter, when the judge's former law partner appeared before the judge, the judge disclosed only the judge's past professional and financial relationship with the law firm, not the judge's ongoing social relationship with the former law partner.

16. A judge failed to recuse or to adequately disclose the judge's prior association in practice with an attorney appearing before the judge. On occasions when the conflict was waived, the judge failed to obtain written waivers of disqualification as required by law. The judge also was verbally abusive toward court staff.

17. On several occasions, a judge granted special courtroom privileges to a particular spectator during proceedings, which may have created the impression that the person was in a special position to influence the judge. The judge also used court resources for personal, non-court related purposes.

IV.
CASE SUMMARIES

**DECISION AND ORDER OF DISMISSAL
OF FORMAL PROCEEDINGS**

In one matter, the Commission dismissed formal proceedings prior to a hearing before special masters.

The Commission determined to dismiss formal proceedings instituted on December 19, 2000 against former Judge Patricia Gray. Judge Gray had been charged with improper conduct during her judicial reelection campaign in connection with statements made in a campaign mailer used by the judge. On August 27, 2002, the Commission issued a Decision and Order of Dismissal that stated:

The Commission on Judicial Performance, having reviewed the Notice of

Formal Proceedings and the U.S. Supreme Court's June 27, 2002 opinion in *Republican Party of Minnesota v. White* (2002) 536 U.S. 765 [122 S.Ct. 2528], hereby dismisses its Notice of Formal Proceedings against former Judge Patricia Gray.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mrs. Crystal Lui, Mrs. Penny Perez, Ms. Ramona Ripston, Ms. Barbara Schraeger, and Dr. Betty L. Wyman voted in favor of dismissing the Commission's Notice of Formal Proceedings against former Judge Patricia Gray. Mr. Marshall B. Grossman and Mr. Michael A. Kahn did not participate in this proceeding.

V. SUBORDINATE JUDICIAL OFFICERS



Since June of 1998, the Commission has shared authority with local courts over the discipline of "subordinate judicial officers" — attorneys employed by California's state courts to serve as court commissioners and referees. In 2002, there were 447 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS As of December 31, 2002

Court Commissioners	399
Court Referees	48
Total	447

COMMISSION PROCEDURES

The constitutional provisions governing the Commission's role in the oversight and discipline of court commissioners and referees expressly provide that the Commission's jurisdiction is discretionary. Each local court retains initial jurisdiction to discipline subordinate judicial officers or to dismiss them from its employment and also has exclusive authority to respond to complaints about conduct problems outside the Commission's constitutional jurisdiction. Since the local court's role is primary, the Commission's rules require that complaints about subordinate judicial officers be made first to the local court. (Commission Rule 109(c)(1).)

Complaints about subordinate judicial officers come before the Commission in a number of ways. First, when a local court completes its disposition of a complaint, the complainant has

the right to seek review by the Commission. (When closing the complaint, the local court is required to advise the complainant to seek such review within 30 days.) Second, a local court must notify the Commission when it imposes written or formal discipline or terminates a subordinate judicial officer. Third, a local court must notify the Commission if a referee or commissioner resigns while an investigation is pending. (Commission Rule 109(c)(3), (4).) Lastly, the Commission may also investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court. (Commission Rule 109(c)(2).)

When a matter comes to the Commission after disposition by a local court, the Commission may commence an investigation if it appears that the local court has abused its discretion by failing to investigate sufficiently, by failing to impose discipline, or by imposing insufficient discipline. To assist in coordinating the Commission's review of complaints and discipline involving commissioners and referees, the California Rules of Court require local courts to adopt procedures to ensure that complaints are handled consistently and that adequate records are maintained. (See California Rules of Court, rule 6.655.) Upon request by the Commission, the local court must make its records concerning the complaint available to the Commission.

The Constitution requires the Commission to exercise its disciplinary authority over subordinate judicial officers using the same standards specified in the Constitution for judges. Thus, the rules and procedures that govern in-

vestigation of judges and formal proceedings (discussed above in Section II, Commission Procedures) also apply to matters involving subordinate judicial officers. In addition to other disciplinary sanctions, the Constitution provides that a person found unfit to serve as a subordinate judicial officer after a hearing before the Commission shall not be eligible to serve as a subordinate judicial officer. The Constitution also provides for discretionary review of Commission determinations upon petition to the California Supreme Court.

2002 STATISTICS

Complaints Received and Investigated

In 2002, 128 new complaints about subordinate judicial officers were reviewed by the Commission. Because the local courts were required to conduct the initial investigations, the Commission's function primarily entailed reviewing the local courts' actions to determine whether there was an abuse of discretion in the disposition of the complaints.

RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition	126
Rule 109(c)(3) – notification by local court of discipline	2

Cases Concluded

In 2002, the Commission concluded its review of 129 complaints involving subordinate judicial officers. One hundred twenty-five of these complaints were closed by the Commission because the Commission determined that the local courts had not abused their discretion in the handling or disposition of the complaints. The matters closed by the Commission after review included one matter in which the local

court had imposed a censure and one matter in which a written reprimand had been imposed.

Two of the 129 cases concluded in 2002 involved subordinate judicial officers who retired or resigned while complaints were under investigation by the local courts. These matters were referred to the Commission under Commission Rule 109(c)(4). In each case, the Commission conducted an investigation and reviewed the matter to determine whether any further action by the Commission was appropriate, in particular, whether proceedings should be instituted concerning the individual's fitness to serve as a subordinate judicial officer. One case was closed conditioned upon the individual's agreement not to serve as a judicial or subordinate judicial officer. If the individual serves or seeks to serve in a judicial capacity, the Commission may release information gathered in its investigation to appointing and evaluating authorities and may reopen its investigation. In the other matter, the Commission determined that further action was not necessary and closed the matter.

Two complaints were closed by the Commission because they were untimely under Commission Rule 109(c)(1).

At the end of the year, three matters remained under investigation.

2002 CASELOAD SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/02	3
New Complaints Considered	128
Cases Concluded in 2002	129
Cases Pending 12/31/02	3
Discrepancies in totals are due to consolidated complaints.	

V.
SUBORDINATE JUDICIAL OFFICERS

**TYPE OF COURT CASE UNDERLYING
SUBORDINATE JUDICIAL OFFICER
COMPLAINTS CONCLUDED IN 2002**

Small Claims	35%
Family Law	33%
General Civil	14%
Traffic	6%
Criminal	6%
All Others (including off-bench)	6%

**SOURCE OF COMPLAINTS
INVOLVING SUBORDINATE JUDICIAL OFFICERS
CONCLUDED IN 2002**

Litigant/Family/Friend	94%
Attorney	2%
Judge/Court Staff	2%
All Other Complainants	2%

VI. JUDICIAL DISABILITY RETIREMENT



VOLUNTARY DISABILITY RETIREMENT

In addition to its disciplinary function, the Commission is responsible for evaluating and acting upon judges' applications for disability retirement. This responsibility is shared with the Chief Justice of the California Supreme Court. The application procedure is set forth in Division V of the Commission's Policy Declarations (Appendix 1, section C). Pertinent statutes are included in Appendix 1, section F. Disability retirement proceedings are confidential, with limited exceptions.

Judges are eligible to apply for disability retirement after either four or five years on the bench, depending on when they took office. This prerequisite does not apply if the disability results from injury or disease arising out of and in the course of service.

The statutory test for disability retirement is a mental or physical condition that precludes the efficient discharge of judicial duties and is permanent or likely to become so. The applicant judge is required to prove that this standard is satisfied. The judge must provide greater support for the application and meet a heavier burden of proof if the application is filed while formal disciplinary charges are pending, if the judge has been defeated in an election, or if the judge has been convicted of a felony.

Judicial disability retirement may afford substantial lifetime benefits. Applications, accordingly, are carefully scrutinized by both the Commission and the Chief Justice. In most cases, the Commission will appoint an independent physician or physicians to review medical

records, examine the judge, and report on whether the judge meets the test for disability retirement.

Because the law requires that the disability be permanent or likely to become so, the applicant judge must exhaust all reasonable treatment options before a decision on the application can be made. If the Commission finds that the judge is disabled, but may recover with treatment, the Commission will keep the application open and closely monitor the judge's progress, requiring regular medical reports and frequent medical examinations. Disability retirement will be approved only if the record, including the opinion of the Commission's independent medical examiners, establishes that further treatment would be futile. If the Commission determines that an application should be granted, it is referred to the Chief Justice for consideration. A judge whose application is denied is given an opportunity to seek review of the denial of benefits.

Once a judge retires on disability, the Commission may review the judge's medical status every two years prior to age 65, to ascertain whether he or she remains disabled. A judge who is no longer disabled becomes eligible to sit on assignment, at the discretion of the Chief Justice. Should an eligible judge refuse an assignment, the disability retirement allowance ceases.

The Judges' Retirement System has authority to terminate disability retirement benefits if the judge earns income from activities "substantially similar" to those which he or she was unable to perform due to disability. Accordingly,

the Commission's Policy Declarations require physicians who support a judge's disability retirement application to specify the judicial duties that cannot be performed due to the condition in question. When the Commission approves an application, it may prepare findings specifying those duties. Upon request of the Judges' Retirement System, the Commission may provide information about a disability retirement application to assist in determining whether to terminate benefits.

INVOLUNTARY DISABILITY RETIREMENT

On occasion, a judge is absent from the bench for medical reasons for a substantial period of time, but does not apply for disability retirement. If the absence exceeds 90 court days in a 12-month period, the presiding judge is required to notify the Commission. Because the

absent judge is not available for judicial service, the Commission will invoke its disciplinary authority and conduct an investigation, which may include an independent medical examination. Should the investigation establish that the judge is disabled or displays a persistent failure or inability to perform judicial duties, the Commission will institute formal proceedings, which may lead to discipline or involuntary disability retirement.

2002 STATISTICS

At the beginning of 2002, two disability retirement applications were pending before the Commission. The Commission received four additional applications during the year. The Commission granted five disability retirement applications during 2002 and denied one application. No applications were pending at the close of 2002.

VII. COMMISSION ORGANIZATION, STAFF AND BUDGET



COMMISSION ORGANIZATION AND STAFF

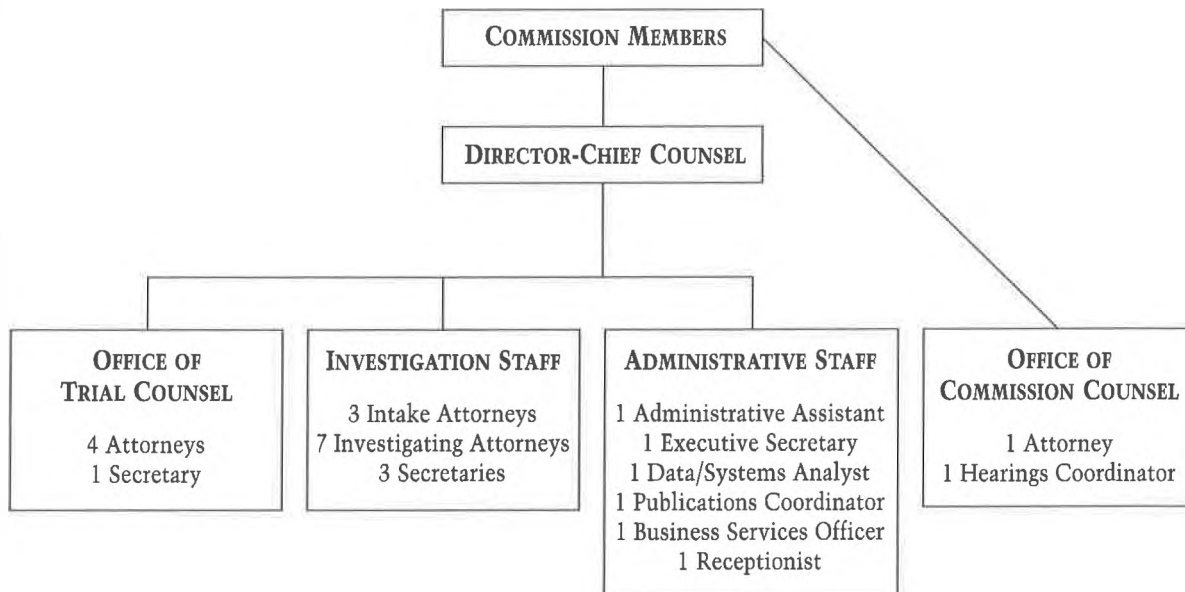
The Commission has 27 authorized staff positions, including 16 attorneys and 11 support staff. All Commission staff are state employees.

The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceedings. The Director-Chief Counsel is also the pri-

mary liaison between the Commission and the judiciary, the public, and the media. Victoria B. Henley has served as Director-Chief Counsel since 1991.

The Commission's legal staff includes 10 attorneys responsible for the evaluation and investigation of complaints. Of these, three are primarily responsible for reviewing and evaluating new complaints, and seven are primarily responsible for conducting staff inquiries and preliminary investigations.

ORGANIZATIONAL CHART



VII.
COMMISSION ORGANIZATION, STAFF AND BUDGET

Four Trial Counsel serve as examiners during formal proceedings. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the special masters. The examiner handles briefing regarding special masters' reports, and presents cases orally and in writing in hearings before the Commission and the California Supreme Court.

Commission Counsel reports directly to the Commission. Commission Counsel is responsible for the coordination of formal hearings and is solely responsible for assisting the Commission in its deliberations during its adjudication of contested matters. Commission Counsel does not participate in the investigation or prosecution of cases. Richard G.R. Schickele has served as Commission Counsel since July of 1998.

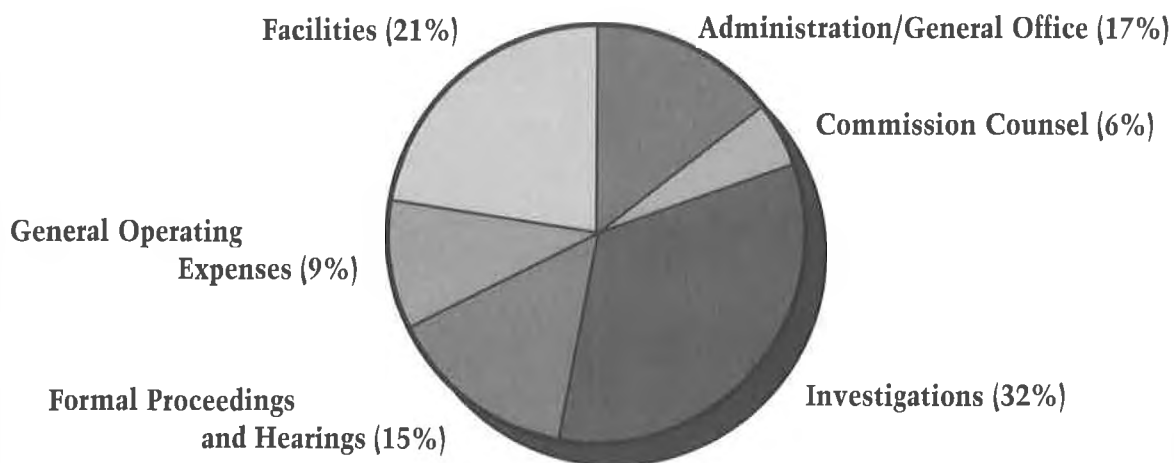
BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2002-2003 fiscal year, the Commission's budget allocation is \$4,055,000.

During the 2001-2002 fiscal year, approximately 32% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 21% of the Commission's budget was used in connection with formal proceedings. The remaining 47% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

**COMMISSION ON JUDICIAL PERFORMANCE
2001-2002 BUDGET EXPENSES**

\$3,565,676 (Actual Expenditure)



APPENDIX 3.

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
	950	997	1,263	1,187	1,183	1,125	1,022	951	835	918

COMMISSION INVESTIGATIONS COMMENCED

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Staff Inquiries	121 (13%)	120 (12%)	163 (13%)	114 (10%)	132 (11%)	122 (11%)	74 (7%)	92 (10%)	50 (6%)	58 (6%)
Preliminary Investigations	35 (4%)	51 (5%)	64 (5%)	60 (5%)	65 (5%)	65 (6%)	30 (3%)	36 (4%)	47 (6%)	37 (4%)
Formal Proceedings Instituted	9 (1%)	14 (1%)	4 (<1%)	8 (1%)	5 (<1%)	6 (<1%)	4 (<1%)	3 (<1%)	6 (<1%)	4 (<1%)

DISPOSITION OF COMMISSION CASES*

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total Dispositions	930	940	1,213	1,176	1,174	1,088	1,059	934	840	901
Closed after Initial Review	809 (87%)	834 (89%)	1,053 (87%)	1,024 (87%)	1,001 (85%)	950 (87%)	929 (88%)	835 (89%)	746 (89%)	830 (92%)
Closed without Discipline after Investigation	79 (8%)	53 (6%)	94 (8%)	102 (9%)	114 (10%)	71 (7%)	86 (8%)	64 (7%)	66 (8%)	40 (4%)
Advisory Letter	26 (3%)	41 (4%)	41 (3%)	34 (3%)	42 (4%)	53 (5%)	30 (3%)	19 (2%)	19 (2%)	17 (2%)
Private Admonishment	7 (1%)	6 (1%)	7 (1%)	4 (<1%)	10 (1%)	3 (<1%)	3 (<1%)	6 (<1%)	5 (<1%)	6 (<1%)
Public Admonishment (or Reproval)	2 (<1%)	3 (<1%)	6 (<1%)	3 (<1%)	4 (<1%)	7 (<1%)	4 (<1%)	6 (<1%)	0 (0%)	1 (<1%)
Public Censure (by Supreme Court or Commission)	0 (0%)	0 (0%)	1 (<1%)	4 (<1%)	1 (<1%)	2 (<1%)	3 (<1%)	1 (<1%)	2 (<1%)	4 (<1%)
Removal	0 (0%)	0 (0%)	2 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	0 (0%)	1 (<1%)	0 (0%)
Judge Resigned or Retired with Proceedings Pending	7 (1%)	3 (<1%)	9 (1%)	5 (<1%)	2 (<1%)	2 (<1%)	3 (<1%)	3 (<1%)	1 (<1%)	3 (<1%)

*See footnote 3 at page 12.